BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking to Develop Additional Methods to Implement the California Renewables Portfolio Standard Program.	Rulemaking 06-02-012 (Filed February 16, 2006)

REPLY OF AGLET CONSUMER ALLIANCE

TO COMMENTS ON PROPOSED DECISION OF ALJ SIMON

April 20, 2009

James Weil, Director
Aglet Consumer Alliance
PO Box 1916
Sebastopol, CA 95473
Tel/FAX (707) 824-5656
jweil@aglet.org

Pursuant to Rule 14.3 *et seq.* of the Commission's Rules of Practice and Procedure, Aglet Consumer Alliance (Aglet) submits this reply to opening comments on the proposed decision (PD) of Administrative Law Judge Anne Simon concerning tradable renewable energy credits (TRECs). (Agenda ID #8406.) Reply comments are due April 20, 2009. Aglet will file this pleading electronically on the due date.

1. Alliance for Retail Energy Markets

The joint comments of the Alliance for Retail Energy Markets and the Western Power Trading Form (AReM/WPTF) state, "However, the underlying concern here – that IOU [investor-owned utility] ratepayers will end up paying more for RPS [Renewables Portfolio Standard] compliance as a result of increased price volatility – would seem to be addressed adequately by the PD's imposition of a $50/MWh cap on the price of TRECs paid by the IOUs." (AReM/WPTF opening comments, pp. 5-6.)

AReM/WPTF incorrectly assumes that it is reasonable for ratepayers to pay $50/REC. The PD points out:

> "This does not mean that purchasing TRECs for the amount of the price cap is per se reasonable. We will evaluate the reasonableness of TREC purchases by utilities in the contract approval process. IOUs must provide sufficient information to the Commission to demonstrate that a TREC contract price is reasonable." (PD, p. 42, footnote 63.)

AReM/WPTF incorrectly claim, "A limitation of the usage of region-wide TRECs would compound the detrimental implications of this for consumers by first reducing the means for LSEs [load serving entities] to cost effectively comply and by secondly increasing the likelihood of utility-owned renewable generation at prices that are uncompetitive." (AReM/WPTF opening comments, p. 7.) They argue that "both of PG&E's [Pacific Gas and Electric Company's] most recent applications for approval of utility-owned renewable projects (Applications

09-02-013 and 09-02-019) seek authorization for stranded cost recovery, which in and of itself suggests that the projects' costs are likely to be above market." (AReM/WPTF opening comments, p. 7, footnote 9.)

There is no record evidence in the instant proceeding to suggest that the costs of utility-owned RPS projects are above market. Application (A.) 09-02-013 deals with natural gas fuel cell projects, not renewable generation.

However, A.09-02-019 is an actual RPS project concerning photovoltaic (PV) generation. PG&E has stated, "PG&E and California need long-term contracts for renewable power in place now and in the next five years, and it is PG&E's goal with this PV Program to pay no more than the just and reasonable market price for that power." (A.09-02-019, PG&E Reply to Protests, April 13, 2009, p. 8, emphasis added.)

AReM/WPTF seek to change the PD's requirement that "all LSEs report TREC prices." (AReM/WPTF opening comments, p. 8.) AReM/WPTF argue that "the Commission has not required non-utility LSEs to report RPS price data before, and the advent of a TREC market is no reason to make them start doing so now." (AReM/WPTF opening comments, pp. 8-9.) AReM and WPTF are wrong. There is a reason for all LSEs to report TREC prices. The PD indicates that it "will evaluate the reasonableness of TREC purchases by utilities in the contract approval process." (PD, p. 42, footnote 63.) The Commission and intervening parties cannot evaluate the reasonableness of TREC purchases by IOUs unless it knows the market prices paid for TRECs by all LSEs.

2. Center for Energy Efficiency and Renewable Technologies

The Center for Energy Efficiency and Renewable Technologies (CEERT) recommends that the 5% limit on TREC transactions only apply to short-term (less than 10 year) transactions. (CEERT opening comments, pp. 8-9.)

CEERT incorrectly claims, "Despite retaining policy statements from the October 2008 TRECs PD regarding the value of using TRECs for RPS compliance, the March 2009 TRECs PD nevertheless imposes a completely unsupported and severe limit on TREC usage." Aglet notes that Southern California Edison Company (SCE) makes similar arguments. (See SCE opening comments, pp. 3-5.)

The PD exercises judgment when determining the appropriate cap on the use of TRECs by regulated utilities. The PD explains:

> "The limited use of TRECs in the early years of the TREC market will promote the price stability associated with long-term fixed price bundled RPS contracts, without stifling the TREC market ... [and] it makes sense to apply this limit only to the three large California utilities, whose ratepayers bear the largest share of risk from price volatility." (PD, p. 29.)

The PD also points out, "The Commission has authority over their rates, and has responsibility to maintain just and reasonable rates for their ratepayers, while ensuring safe and reliable service and implementing the RPS program goals." (PD, p. 33.) In other words, the PD established the 5% limit in order to protect ratepayers from unjust and unreasonable rates. The PD is simply attempting to ensure that rates are just and reasonable as required by Public Utilities Code §451.

3. Pacific Gas and Electric Company

PG&E incorrectly states, "Ensuring price stability at the renewable deal level can not only impose unreasonable constraints that have nothing to do with RPS compliance, but there is minimal or no bottom line effect on price stability for customers because this is managed at the portfolio level, not at the deal level." (PG&E opening comments, pp. 3-4.)

PG&E essentially argues that because PG&E hedges electricity price risk at the portfolio level, the replacement of fixed price renewables contracts with RECs will have no effect on customers. This argument is fatally flawed. When fixed price renewables contracts are effectively replaced with RECs, the overall risk of

the portfolio increases. Thus, PG&E must increase its hedging activities to achieve the same level of risk that it could have had with the foregone fixed price renewables contracts. PG&E customers will then pay the cost of additional hedging necessitated by PG&E's use of RECs.

PG&E criticizes the PD, arguing that "trying to define a bundled renewables purchase as a RECs-only transaction is unnecessary, and contrary to the nature of the original transaction." (PG&E opening comments, p. 4.) PG&E apparently misunderstands the PD in this instance. The PD would not classify all bundled renewables purchases as REC-only transactions. The PD explains that "we exercise our authority to provide that, where the buyer can show a match with newly acquired firm energy at a price that is not indexed to energy prices, as set forth above, the deal may be treated as a bundled energy transaction for RPS compliance purposes." (PD, p. 52.)

PG&E also argues that the Commission's 5% limit on REC transactions should be eliminated. PG&E argues:

> "The PD states that the 5% limitation 'is fundamentally a protection for California utility ratepayers,' but fails to explain exactly what protection is being provided. Utility customers are already protected from paying high prices for RECs by the $50/REC price cap. ...
>
> "Second, if the Commission decides to retain any percentage limitation, at a minimum, it should be applied to all LSEs. ... There is no reasoned basis for allowing other LSEs to comply with California's RPS requirements with the amount of RECs they deem appropriate while limiting the IOUs to a fixed percentage, even if the limitation is only temporary." (PG&E opening comments, p. 5, footnotes omitted.)

PG&E is wrong. First, the purpose of the 5% limitation is to protect IOU customers from high REC prices. The PD appropriately relies judgment to determine the appropriate cap on the use of TRECs by regulated utilities. (See PD, p. 29.) Furthermore, utility customers are not protected from paying high REC

prices by a $50/REC price cap because a $50/REC is in itself a high price. The PD effectively acknowledges this fact when it declares its intention to review the REC prices paid by IOUs. (PD, p. 42, footnote 63.)

Second, there is a reasonable basis for allowing other LSEs to comply with California's RPS requirements with the amount of RECs they deem appropriate while limiting the IOUs to a fixed percentage. The PD points out that "it makes sense to apply this limit only to the three large California utilities, whose ratepayers bear the largest share of risk from price volatility." (PD, p. 29.)

4. Southern California Edison Company

Southern California Edison Company (SCE) recommends:

> "In the alternative, the CPUC could instead revise the PD to include a $50 benchmark against which to judge TREC purchases. Under such a structure, IOU TREC purchases under $50 would be deemed reasonable and would automatically be eligible for cost recovery (within certain volume limits to be proposed by the IOU and approved by the CPUC), while transactions for TRECs above $50 would be brought to the CPUC for case-by-case approval." (SCE opening comments, p. 13.)

The Commission should reject SCE's recommendation for two reasons: (1) SCE's proposal would not protect ratepayers from high REC prices; and (2) SCE fails to identify any factual, legal, or technical error associated with the price cap mandated by the PD.

5. San Diego Gas & Electric Company

San Diego Gas & Electric Company (SDG&E) apparently believes that the PD would ban renewables contracts that are indexed to energy prices. (SDG&E opening comments, p. 11.) In fact, the PD does not ban indexed contracts. The PD simply requires that certain indexed contracts be treated as REC-only transactions. (PD, Conclusion of Law 10, p. 67.)

* * *

Consultant Jan Reid drafted this pleading on Aglet's behalf.

Dated April 20, 2009 at Sebastopol, California.

/s/

James Weil, Director

VERIFICATION

I, James Weil, represent Aglet Consumer Alliance and am authorized to make this verification on the organization's behalf. The statements in the foregoing document are true to the best of my knowledge, except for those matters that are stated on information and belief, and as to those matters I believe them to be true.

I declare under penalty of perjury that the foregoing is true and correct.

Dated April 20, 2009 at Sebastopol, California.

/s/

James Weil, Director
Aglet Consumer Alliance
PO Box 1916
Sebastopol, CA 95473
Tel/FAX (707) 824-5656
jweil@aglet.org

CERTIFICATE OF SERVICE

I certify that I have by electronic mail this day served a true copy of the original attached "Reply of Aglet Consumer Alliance to Comments on Proposed Decision of ALJ Simon" on all parties of record in this proceeding or their attorneys of record.

I will serve paper copies of the pleading on Assigned Commissioner Michael Peevey, Administrative Law Judge Anne Simon, and six persons or firms that did not provide the Commission with an e-mail address: AOL Utility Corp., 12752 Barrett Lane, Santa Ana, CA 92705; Larry Eisenstat and Richard Lehfeldt, Dickstein Shapiro LLP, 1825 Eye Street, NW, Washington, DC 20006; Donald Furman, Iberdrola Renewables, 1125 NW Couch St. #700, Portland, OR 97209; Jan Hamrin, Center for Resource Solutions, PO Box 29512, San Francisco, CA 94129; and Sara O'Neill, Constellation NewEnergy, Inc., One Market Street, Spear Tower, 36h Floor, San Francisco, CA 94105.

Dated April 20, 2009, at Sebastopol, California.

/s/

James Weil